

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE SHELBY INSURANCE COMPANY : CIVIL ACTION
: :
v. : :
: :
LESLEY D. FEASTER, ANTHONY : (Consolidated Under)
FEASTER and WELLS FARGO HOME : :
MORTGAGE, INC. : NO. 03-3600

LESLEY FEASTER : CIVIL ACTION
: :
v. : :
: :
THE SHELBY INSURANCE COMPANY : NO. 03-3805

MEMORANDUM AND ORDER

Fullam, Sr. J. November , 2004

The Levittown home of Lesley D. and Anthony Feaster was severely damaged in a fire which occurred on August 9, 2002. The issue presented in these consolidated cases is whether the Feasters are entitled to recover the proceeds of a fire insurance policy issued by the Shelby Insurance Company ("Shelby"). Shelby brought suit in this court seeking a declaration of non-coverage, and, shortly thereafter, removed to this court the state-court lawsuit filed by the Feasters to recover the policy proceeds. The cases have been consolidated, and tried non-jury.

Shelby seeks to avoid payment under its policy on two theories: (1) that the Feasters intentionally caused the fire; and (2) that the Feasters knowingly provided false information to

Shelby in connection with the fire. As to both issues, Shelby bears the burden of proof.

The evidence disclosed that the fire originated in a second-floor storage area. Both the local fire marshal and an insurance investigator opined that the fire was incendiary in origin. The burn-pattern was consistent with the presence of a flammable liquid on the floor; the fire burnt downward through the floor to the room below; and there were no likely sources of ignition at or near the point of origin of the fire. The evidence was consistent with the notion that someone had poured gasoline on the floor of the storage area and set fire to it.

Both Mr. and Mrs. Feaster left the house that day at approximately 4:45 p.m. to embark upon a bus trip to Atlantic City, sponsored by Mrs. Feaster's employer. A neighbor reported the fire approximately 15 minutes later, shortly after 5:00 p.m. When the firemen arrived at the scene, they found that the house was locked.

Shelby also introduced evidence to the effect that the Feasters were in some financial difficulties, and thus had a motive to set the fire. Shelby's argument is quite straightforward: the fire was set by someone, and only the Feasters could have set it.

There are, however, countervailing considerations. Both Mr. and Mrs. Feaster denied having set the fire, or having caused anyone else to do so. Both were credible witnesses.

Moreover, it is counter-intuitive to suppose that someone intent upon arson would have set the fire in an upstairs storage area, or that the Feasters could have poured gasoline, started the fire, and safely made their escape.

Of particular importance, in my view, is the fact that the Feasters' pet cat was in the house at the time of the fire (and died a week later from the effects of the fire).

It should also be noted that, with full knowledge of the facts set forth above, the police have never sought to bring criminal charges against the Feasters or anyone else in connection with the fire. Indeed, even the incendiary nature of the fire is by no means certain. When the fire fighters arrived at the scene, they observed that a circuit-breaker had tripped; and there was evidence of arcing in an electric cable on the second floor of the dwelling. Shelby's witnesses ruled out the possibility that an electrical accident caused the fire, because the cable where the arcing occurred was a few feet away from the origin of the fire, at the opposite end of the room; and because all of the electrical outlets in the house except one were in working condition, and the Feasters verified that the one inoperative outlet had been in that condition for some time.

The fire marshal sent samples of the burned flooring to the state police lab for analysis to determine the presence of accelerants; their tests did not find any accelerants. Shelby's insurance investigator sent floor samples to another laboratory, which detected the presence of Class II accelerants, most probably gasoline.

Shelby's insurance investigator, Mr. O'Drain, testified that he placed the samples in a one-gallon paint can which he had obtained from Home Depot, and mailed the can to the lab. Professor Dougherty conducted the tests at the laboratory, not by testing the sample itself, but by inserting a probe into the sealed paint can and testing a sample of the air within the can. Thus, the validity of his test results depends entirely upon whether the air within the can could have been contaminated from some source other than the flooring sample.

I am prepared to assume that Mr. O'Drain used a brand-new paint can which had never been used, and that he took every reasonable precaution to avoid contamination. I thus find as a fact that the test performed by Professor Dougherty disclosed the presence of gasoline, whereas the test performed by the state police lab did not. Given the evidence about burn patterns, I conclude that it is probable that gasoline was in fact present, and that Professor Dougherty's results are reliable. But even that issue is not entirely free from doubt.

Viewing the evidence as a whole, I am unable to conclude that Shelby has established that either of the Feasters set the fire or caused it to be set. I think it much more likely that an electrical accident of some kind was the cause. In any event, I am satisfied that neither of the Feasters bears responsibility.

I have also concluded that Shelby has not met its burden of proof on the issue of false statements. Shelby argues that the Feasters misrepresented their financial situation, making it appear that they had no pressing reason for setting the fire, whereas, according to Shelby, they had long been in dire financial straits. The evidence does make clear that, not unlike a great many other people, the Feasters were barely getting by. But I believe their statements under oath, when questioned by Shelby, were substantially correct, when viewed in their entirety. The discrepancies, if any, are matters of interpretation. Mrs. Feaster freely admitted that she had long made a practice of making late payments on her financial obligations, and had found it necessary to negotiate special arrangements with her mortgage company on various occasions. Many of these problems had arisen one or two years before the date of the fire, and had been resolved. It was, and is, Mrs. Feaster's understanding that she was indeed "current" on her mortgage at the time of the fire because she had negotiated, and

was in compliance with, an arrangement which enabled her to reduce her delinquent payments over time. Her testimony that she had had no difficulty with credit card payments for several years was true: neither she nor her husband has had any credit cards since 1990.

At trial, Shelby stressed the fact that the Feasters had been denied credit for the purchase of an automobile. Mrs. Feaster explained, without contradiction, that neither she nor her husband had applied for such credit, but were the victims of a scam being perpetrated by a car dealer who is now in prison for having submitted fake applications without authorization.

In my view, the most that can be said is that the Feasters resented Shelby's detailed investigation of their finances, were offended by Shelby's accusations of arson, and were therefore not particularly forthcoming in their disclosures to Shelby. But I believe they gave Shelby a reasonably accurate picture of their financial situation (which was not markedly worse than it had been for years).

For all the foregoing reasons, judgment will be entered in favor of the Feasters and against Shelby.

With respect to the amount of damages, Mr. Horowitz testified on behalf of the Feasters that he had obtained two bids from reliable contractors for the repair of the dwelling house. One bid was for \$105,000, the other was for \$87,000. I accept as

reasonable the lower of these two figures. I also accept as reasonable the estimate of \$29,180 for the loss of contents. Thus, I find the total damages to be \$116,080. The Feasters are entitled to interest on that sum from the time it should have been paid until this date, a period of two years. Thus, the total interest award is \$13,930. Judgment will therefore be entered in the sum of \$130,010. An Order follows.

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: :
v. : :
: : (Lead Case)
LESLEY D. FEASTER, ANTHONY : :
FEASTER and WELLS FARGO HOME : :
MORTGAGE, INC. : NO. 03-3600

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v. : :
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THE SHELBY INSURANCE COMPANY : NO. 03-3805

ORDER

AND NOW, this day of November 2004, IT IS ORDERED:

that JUDGMENT is entered in favor of Lesley D.

Feaster and Anthony Feaster, and against The Shelby Insurance
Company, in the sum of \$130,010.

John P. Fullam, Sr. J.